

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-6015**

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ALVIN O. WASHINGTON,

Plaintiff - Appellant,

versus

CENTRAL VIRGINIA REGIONAL JAIL; APRIL RYDOR;  
LIEUTENANT HARDERSON; LIEUTENANT SHOULDER;  
LIEUTENANT WRIGHT; TONY GRIMS; OFFICER  
DARNELL; J. LLOYD, Captain; CAPTAIN GRAMM;  
JOHN DOES, and other unknown defendants,

Defendants - Appellees.

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Appeal from the United States District Court for the Western  
District of Virginia, at Roanoke. Samuel G. Wilson, Chief District  
Judge. (CA-02-495-7)

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Submitted: March 25, 2004

Decided: April 1, 2004

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Before TRAXLER, KING, and DUNCAN, Circuit Judges.

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Affirmed as modified by unpublished per curiam opinion.

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Alvin O. Washington, Appellant Pro Se. Helen Eckert Phillips,  
Stanardsville, Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Alvin O. Washington appeals the district court's order dismissing his 42 U.S.C. § 1983 (2000) complaint for failure to exhaust administrative remedies. The district court properly required exhaustion of administrative remedies under 42 U.S.C. § 1997e(a) (2000). Because Washington did not demonstrate to the district court that he had exhausted administrative remedies or that such remedies were not available, the court's dismissal of the action was not an abuse of discretion. Washington may refile his action after exhaustion; therefore, we modify the dismissal to be without prejudice. See 28 U.S.C. § 2106 (2000). Accordingly, we affirm the district court's order as modified. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED